

Rex Y. Fujichaku 7198
David M. Plona 9892
BRONSTER FUJICHAKU ROBBINS
1003 Bishop Street, Suite 2300
Honolulu, HI 96813
Tel: 808-524-5644; Fax: 808-599-1881
Email: rfujichaku@bfrhawaii.com
dplona@bfrhawaii.com

Lena N. Bacani (*pro hac vice*)
LOZA & LOZA, LLP
305 N. Second Ave., Ste. 127
Upland, CA 91786
Tel: (877) 406-5164; Fax: (213) 394-3625
Email: lena.bacani@lozaip.com

*Attorneys for Defendants/Counterclaimants,
NTKN, INC. and HUNG KY*

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

TRENDTEX FABRICS, LTD., a Hawaii
Corporation; and TRENDTEX HOLDING,
LLC, a Hawaii limited liability company;

Plaintiff,

v.

NTKN, INC., a Hawaii corporation; HUNG
KY, an individual; SHAKA TIME, INC., a
Hawaii corporation; LEILANI' S ATTIC,
INC., a California corporation; and HAWAII
HANGOVER, LLC, a Missouri limited
liability company; MARK MADL, an
individual D/B/A CITIES FASHION;

Defendants.

Case No. 1:22-cv-00287-MWJS-KJM

**CONCISE STATEMENT OF
DISPUTED FACTS IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT [DKT.
168]; DECLARATION OF LENA
BACANI; EXHIBITS "1" – "6";
DECLARATION OF HUNG KY;
CERTIFICATE OF
COMPLIANCE; CERTIFICATE
OF SERVICE**

Trial Date: July 29, 2024

Honorable Micah W.J. Smith

NTKN, INC., a Hawaii corporation; and
HUNG KY, an individual;

Counterclaimants,

v.

TRENDTEX FABRICS, LTD., a Hawaii
corporation,

Counter-Defendant.

Pursuant to Local Rule 56.1(b), Defendants and Counterclaimants NTKN, Inc. (“NTKN”), and Hung Ky (“Ky”), (collectively, “NTKN”), file this Concise Statement of Disputed Facts in Opposition to the Motion for Partial Summary Judgment (Dkt. 168) filed by Plaintiffs Trendtex Fabrics, Ltd. (“Trendtex Fabrics”) and Trendtex Holding, LLC (“Trendtex Holding”), (collectively “Plaintiffs”), and in support of NTKN’s Counter-Motion for Summary Judgment regarding Plaintiffs’ lack of standing.

PLAINTIFFS’ ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
1. Trendtex Fabrics, Ltd. (“Trendtex Fabrics”) has been selling fabrics printed with its copyrighted textile print surface designs since 1984.	Undisputed.
2. Trendtex Fabrics’ copyright portfolio includes 518 registrations, some of which are compilations containing multiple designs, from its 2015 acquisition of another fabric seller, HawaiiPrint, Inc. (“HawaiiPrint”).	DISPUTED that Trendtex Fabrics owns a copyright portfolio. Trendtex Fabrics does not own the copyright portfolio for reasons detailed above. Undisputed that multiple designs may be included in registrations. Dkt. 168 at ¶ 3; Hamai Decl. ¶ 14.
3. Trendtex Fabrics began assigning the copyrights at issue in this action, including the right to sue for past, present, and future infringements, to a new entity named Trendtex Holding, LLC (“Trendtex Holding”).	Undisputed.
4. Taken together, Trendtex has the right to sue for past, present, and future	DISPUTED. Trendtex Fabrics does not have the right to sue for past, present and future

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
infringements of Trendtex's and HawaiiPrint's copyrighted textile print surface designs.	<p>infringements because it expressly assigned those rights to Trendtex Holding.</p> <p>Trendtex Holding does not have the right to sue because it did not have standing at the outset of the litigation, as the Asserted Copyrights were assigned after the case was filed.</p> <p><i>See</i>, Dkt. 168 at ¶ 3; Hamai Decl. ¶ 14.</p>
5. Trendtex Fabrics sells many of its fabrics in multiple colorways that are identified by background color.	Undisputed.
6. Trendtex Fabrics sold fabrics to Ky's International Fashion, Inc. ("Ky's") from 1997/1998 until approximately 2008.	Undisputed.
7. Defendant Hung Ky was a co-owner of Ky's and is now the sole owner of Defendant NTKN, Inc. ("NTKN").	Undisputed.
8. Defendant Ky closed Ky's in 2016 and replaced it with NTKN in 2016. NTKN took over Ky's' supplies and inventory, continues to sell the same types of garments to the same customers, and does business as "Ky's International Fashion."	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b).</p> <p>Undisputed.</p>
9. NTKN is primarily a garment wholesaler to retail outlets. It also conducts a small amount of its own retail business through its websites www.kyifi.org , www.kysalohashirts.com , www.edenshawaii.com , and an Etsy account for Edens Hawaii.	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b).</p> <p>Undisputed that NTKN offers some garments for sale online through the 3 websites but DISPUTED that sells through Etsy.</p> <p>Ky Decl. ¶ 10.</p>
10. Trendtex registered the EH-20129 design on March 7, 2002, and sold fabric from that design to Ky's in black, navy, and blue. NTKN also admits that it (or	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b).</p> <p>NTKN objects to this statement as vague and ambiguous with respect to the terms navy and</p>

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
presumably Ky's) purchased fabric from that design from Trendtex Fabrics.	<p>blue, and DISPUTES the statement on that basis.</p> <p>DISPUTED that Trendtex sold the EH-20129 design to NTKN only in black, navy and blue. It is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the EH-20129 design directly from Trendtex Fabrics.</p> <p>Ky Decl. ¶¶ 14, 21.</p>
11. Trendtex registered the EH-2E13B design on July 22, 2002, and sold fabric from that design to Ky's in blue, maize, grey, and white. NTKN also admits that it (or presumably Ky's) purchased fabric from that design from Trendtex Fabrics.	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b). NTKN objects to this statement as the term "blue" is vague and ambiguous, and DISPUTES that statement on that basis.</p> <p>DISPUTED that Trendtex sold the EH-2E13B design to NTKN only in the listed colors. It is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the EH-2E13B design directly from Trendtex Fabrics.</p> <p>Ky Decl. ¶¶ 14, 22.</p>
12. Trendtex registered the EH-2M59 design on July 3, 2000, and sold fabric from that to Ky's in red, black, teal, and orange. NTKN also admits that it (or presumably Ky's) purchased fabric from that design from Trendtex Fabrics.	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b). NTKN objects to this statement as vague and ambiguous with respect to the terms "red" and "teal" and DISPUTE the statement on that basis.</p> <p>DISPUTED that Trendtex sold the EH-2M59 design to NTKN only in the listed colors. It is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the EH-2M59 design directly from Trendtex Fabrics.</p>

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
	Ky Decl. ¶¶ 14, 23.
13. Before being acquired by Trendtex Fabrics, HawaiiPrint also sold fabric to Ky's between approximately 2009 and 2014.	Undisputed.
14. HawaiiPrint registered the 73142 design on May 22, 2012, and sold fabric from that design to Ky's in black, sage, and white, all in rayon poplin. NTKN also admits that it (or presumably Ky's) purchased fabric from that design from HawaiiPrint.	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b).</p> <p>DISPUTED that HawaiiPrint sold the 73142 design to NTKN only in the listed colors. It is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the 73142 design directly from HawaiiPrint.</p> <p>Ky Decl. ¶¶ 15, 24-25.</p>
15. HawaiiPrint registered the 73469 design on June 6, 2012, and sold fabric from that design to Ky's in red, orange, and blue, all in cotton poplin. NTKN also admits to purchasing fabric from that design from HawaiiPrint. NTKN also admits that it (or presumably Ky's) purchased fabric from that design from HawaiiPrint.	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b). NTKN objects to this statement as the terms "red" and "blue" are vague and ambiguous in this context and, on that basis, DISPUTES the statement.</p> <p>It is also DISPUTED that HawaiiPrint sold the 73469 design to NTKN only in the listed colors. It is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the 73469 design directly from HawaiiPrint.</p> <p>Ky Decl. ¶¶ 15, 26-27</p>
16. HawaiiPrint registered the 73571 design on June 6, 2012, and sold fabric from that design to Ky's in white, burgundy, and black, all in cotton poplin. NTKN also admits that it (or	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b).</p> <p>DISPUTED that HawaiiPrint sold the 73571 design to NTKN only in the listed colors. It</p>

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
presumably Ky's) purchased fabric from that design from HawaiiPrint.	<p>is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the 73571 design directly from HawaiiPrint.</p> <p>Ky Decl. ¶¶ 15, 28-29.</p>
17. HawaiiPrint registered the 73614 design on September 5, 2012, and sold fabric from that design to Ky's in black/red and white/red, all in cotton poplin. NTKN also admits that it (or presumably Ky's) purchased fabric from that design from HawaiiPrint.	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b).</p> <p>DISPUTED that HawaiiPrint sold the 73614 design to NTKN only in the listed colors. It is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the 73614 design directly from HawaiiPrint.</p> <p>Ky Decl. ¶¶ 15, 30-31.</p>
18. HawaiiPrint registered the 73627 design on September 5, 2012, and sold fabric from that design to Ky's in navy, white/white, and black, all in cotton poplin. NTKN also admits that it (or presumably Ky's) purchased fabric from that design from HawaiiPrint.	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b). NTKN objects to this statement as vague and ambiguous with respect to the term "navy" and DISPUTES it on that basis.</p> <p>It is also DISPUTED that HawaiiPrint sold the 73627 design to NTKN only in the listed colors. It is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the 73627 design directly from HawaiiPrint.</p> <p>Ky Decl. ¶¶ 15, 32-33.</p>
19. HawaiiPrint registered the 4319B design on November 10, 2014, and sold fabric from that design to Ky's in navy, green, and orange, all in cotton poplin. NTKN also admits that it (or presumably Ky's) purchased fabric from that design from HawaiiPrint.	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b). NTKN objects to this statement because the terms "navy" and "green" are vague and ambiguous in this context and, on that basis, DISPUTES it.</p>

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
	<p>It is also DISPUTED that HawaiiPrint sold the 4319B design to NTKN only in the listed colors. It is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the 4319B design directly from HawaiiPrint.</p> <p>Ky Decl. ¶¶ 15, 34-35.</p>
<p>20. HawaiiPrint registered the 73269 design on May 22, 2012, and sold fabric from that design to Ky's in white, yellow, and black, all in cotton poplin. NTKN also admits that it (or presumably Ky's) purchased fabric from that design from HawaiiPrint.</p>	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b).</p> <p>DISPUTED that HawaiiPrint sold the 73269 design to NTKN only in the listed colors. It is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the 73269 design directly from HawaiiPrint.</p> <p>Ky Decl. ¶¶ 15, 36-37.</p>
<p>21. HawaiiPrint registered the 03780 design on September 24, 2014, and sold fabric from that design to Ky's in navy, white, and sage, all in cotton poplin. NTKN also admits that it (or presumably Ky's) purchased fabric from that design from HawaiiPrint.</p>	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b). NTKN objects to the term "navy" as vague and ambiguous in this context and DISPUTES this statement on that basis.</p> <p>It is also DISPUTED that HawaiiPrint sold the 03780 design to NTKN only in the listed colors. It is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the 03780 design directly from HawaiiPrint.</p> <p>Ky Decl. ¶¶ 15, 38-39.</p>
<p>22. HawaiiPrint registered the 73138 design on May 22, 2012, and sold fabric from that design to Ky's in black, white, and wine, all in cotton poplin. NTKN also admits that it (or presumably Ky's)</p>	<p>NTKN objects to this statement because it consists of multiple facts and multiple statements contrary to Local Rule 56.1(b).</p> <p>DISPUTED that HawaiiPrint sold the 73138 design to NTKN only in the listed colors. It</p>

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
purchased fabric from that design from HawaiiPrint.	is undisputed that NTKN, through its predecessor, Ky's International Fashion, Inc. ("Ky's Int'l"), purchased fabrics with the 73138 design directly from HawaiiPrint. Ky Decl. ¶¶ 15, 40-41.
23. NTKN alleges that all alleged infringing garments were made from fabric purchased from Trendtex Fabrics or HawaiiPrint.	Undisputed.
24. NTKN does not buy unused fabric from other garments makers.	NTKN objects to this statement as vague and ambiguous as to the terms "unused fabric" and "other garment makers" and on that basis this is DISPUTED.
25. NTKN sold garments from its 821 series, which is substantially similar to 73142, in blue.	NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are "substantially similar" and the statement is DISPUTED on that basis. NTKN objects to the term "blue" as vague and ambiguous and DISPUTES this statement on that basis. It is undisputed that NTKN sold garments in its 821 series using fabric purchased from HawaiiPrint with the 73142 design. It is DISPUTED that NTKN sold 821 garments in "blue." NTKN sold garments in a light bluish-green color from fabric obtained directly from HawaiiPrint's factory. Ky Decl. ¶¶ 24.
26. NTKN sold garments from its 493 series, which is substantially similar to 73469, in turquoise.	NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are "substantially similar" and the statement is DISPUTED on that basis. NTKN objects to the term "turquoise" as vague and ambiguous in this context and DISPUTES on that basis.

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
	<p>It is undisputed that NTKN sold garments in its 493 series using fabric purchased from HawaiiPrint with the 73469 design. NTKN purchased the fabric from HawaiiPrint in “blue” but received light blue-green color with the surface design from the factory.</p> <p>Ky Decl. ¶¶ 26.</p>
<p>27. NTKN sold garments from its 499 series, which is substantially similar to 73571, in navy, green, and blue.</p>	<p>NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are “substantially similar” and the statement is DISPUTED on that basis. NTKN further objects to the terms navy, green and blue as vague and ambiguous in this context, and DISPUTES on that basis.</p> <p>It is undisputed that NTKN sold garments in its 499 series using fabric purchased from HawaiiPrint with the 73571 design. NTKN denies that it purchased fabric with this design from any third party.</p> <p>Ky Decl. ¶¶ 28.</p>
<p>28. NTKN sold garments from its 477 series, which is substantially similar to 73614, in blue.</p>	<p>NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are “substantially similar” and the statement is DISPUTED on that basis. NTKN also objects to the term “blue” as vague and ambiguous in this context and DISPUTES this statement on that basis.</p> <p>It is undisputed that NTKN sold garments in its 477 series using fabric purchased from HawaiiPrint incorporating the 73614 design in a blue color. NTKN DISPUTES that it purchased any fabric with this design from any third party.</p> <p>Ky Decl. ¶¶ 30</p>

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
<p>29. NTKN sold garments from its 492 series, which is substantially similar to 73627, in green.</p>	<p>NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are “substantially similar” and the statement is DISPUTED on that basis. NTKN objects to this statement as the term “green” is vague and ambiguous in this context and, on that basis, DISPUTES it.</p> <p>It is undisputed that NTKN sold garments in its 492 series using fabric purchased from HawaiiPrint incorporating the 73627 design in a blue color. NTKN DISPUTES that it purchased any fabric with this design from any third party.</p> <p>Ky Decl. ¶¶ 32</p>
<p>30. NTKN sold garments from its 504 series, which is substantially similar to 4319B, in turquoise.</p>	<p>NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are “substantially similar” and the statement is DISPUTED on that basis.</p> <p>It is undisputed that NTKN sold garments in its 504 series using fabric purchased from HawaiiPrint incorporating the 4319B design in a blu-green, aqua-ish color. NTKN DISPUTES that it purchased any fabric with this design from any third party.</p> <p>Ky Decl. ¶¶ 34</p>
<p>31. NTKN sold garments from its 538 series, which is substantially similar to EH-20129, in red and yellow.</p>	<p>NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are “substantially similar” and the statement is DISPUTED on that basis. NTKN objects to the term “red” as vague and ambiguous in this context and DISPUTES this statement on that basis.</p> <p>It is undisputed that NTKN sold garments in its 538 series using fabric purchased from</p>

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
	<p>Trendtex incorporating the EH-20129 design in a redish color. NTKN DISPUTES that it purchased any fabric with this design from any third party.</p> <p>Ky Decl. ¶¶ 14, 21</p>
<p>32. NTKN sold garments from its 825 series, which is substantially similar to 73269, in blue.</p>	<p>NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are “substantially similar” and the statement is DISPUTED on that basis. NTKN objects to the term “blue” as vague and ambiguous in this context and DISPUTES this statement on that basis.</p> <p>It is undisputed that NTKN sold garments in its 825 series using fabric purchased from HawaiiPrint incorporating the 73269 design in a bluish color. NTKN DISPUTES that it purchased any fabric with this design from any third party.</p> <p>Ky Decl. ¶¶ 36.</p>
<p>33. NTKN sold garments from its 358 series, which is substantially similar to EH-2E13B, in blue.</p>	<p>NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are “substantially similar” and the statement is DISPUTED on that basis. NTKN objects to this statement as the term “blue” is vague and ambiguous in this context and, on that basis, DISPUTES it.</p> <p>It is undisputed that NTKN sold garments in its 358 series using fabric purchased from Trendtex Fabrics incorporating the EH-2E13B design. NTKN ordered in “blue” bot got a lighter greenish-blue from the factory. NTKN DISPUTES that it</p>

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
	<p>purchased any fabric with this design from any third party.</p> <p>Ky Decl. ¶¶ 22.</p>
<p>34. NTKN sold garments from its 503 series, which is substantially similar to 03780, in blue.</p>	<p>NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are “substantially similar” and the statement is DISPUTED on that basis. NTKN objects to this statement as vague and ambiguous as to the term “blue” and DISPUTES this statement on that basis.</p> <p>It is undisputed that NTKN sold garments in its 503 series using fabric purchased from HawaiiPrint incorporating the 03780 design in black. NTKN DISPUTES that it purchased any fabric with this design from any third party.</p> <p>Ky Decl. ¶¶ 38.</p>
<p>35. NTKN sold garments from its 342 series, which is substantially similar to EH-2M59, in pink.</p>	<p>NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are “substantially similar” and the statement is DISPUTED on that basis. NTKN objects to this statement as the term “pink” is vague and ambiguous in this context and, on that basis, DISPUTES it.</p> <p>It is undisputed that NTKN sold garments in its 342 series using fabric purchased from Trendtex Fabrics incorporating the EH-2M59 design in a pinkish color. NTKN DISPUTES that it purchased any</p>

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
	<p>fabric with this design from any third party.</p> <p>Ky Decl. ¶¶ 14, 23</p>
<p>36. NTKN sold garments from its 820 series, which is substantially similar to 73138, in blue.</p>	<p>NTKN objects to this statement as it calls for a legal conclusion, namely that the NTKN garment and surface design are “substantially similar” and the statement is DISPUTED on that basis. NTKN objects to this statement as the term “blue” is vague and ambiguous in this context and, on that basis, DISPUTES it.</p> <p>It is undisputed that NTKN sold garments in its 820 series using fabric purchased from HawaiiPrint incorporating the 73138 design but it is DISPUTED that NTKN ever sold the product in a bluish color. NTKN DISPUTES that it purchased any fabric with this design from any third party.</p> <p>Ky Decl. ¶¶ 40</p>
<p>37. Neither Trendtex Fabrics nor HawaiiPrint made any other sales of the specific designs raised in this motion.</p>	<p>DISPUTED. NTKN objects to this statement as vague and ambiguous as it is unclear what is meant by “any other sales.” NTKN DISPUTES that Trendtex and HawaiiPrint did not sell it all the colors and fabrics incorporating the subject surface designs.</p> <p>Ky Decl. ¶¶ 14-40</p>
<p>38. Trendtex began suspecting that NTKN was selling garments made from unauthorized reproductions of its fabrics in October 2021 because the garments were being sold in new</p>	<p>DISPUTED. NTKN has not sold any garments with unauthorized reproductions of fabrics incorporating the asserted surface designs in October 2021 or any other time.</p>

PLAINTIFFS' ASSERTED FACTS	UNDISPUTED/DISPUTED AND EVIDENCE
<p>colors or material or had engraving differences from the original printings.</p>	<p>It is DISPUTED that Trendtex and HawaiiPrint did not provide NTKN with the fabrics used in the accused products. Expert, Linda Bradley has testified that variations in the surface designs are not uncommon with the printing techniques used.</p> <p>Ky Decl. ¶¶ 14-40; Bacani Decl. ¶ 6, Ex. 5 (excerpts of Linda Bradley expert report).</p>
<p>39. Both Trendtex Fabrics and HawaiiPrint kept “hanger samples” of each colorway from each printing that are previews of each printing run.</p>	<p>DISPUTED that samples of all fabrics purchased by NTKN’s predecessor were retained by HawaiiPrint or Trendtex. HawaiiPrint was a separate company at the time of Ky’s International’s fabric purchases and had different ordering and sample procedures. Mr. Hamai testified for Trendtex that Trendtex Fabrics does not keep all samples and has constantly purged them over time.</p> <p>Further DISPUTED that hanger samples (which are previews of printing runs), show final products (in both color and print) shipped to NTKN’s predecessor, Ky’s International Fashion, Inc., over a nearly 18 year period.</p> <p>Deposition of Dwight Hamai (Trendtex 30(b)(6)) ¶4, Ex. 3(103:20 – 108:5); Ky Decl. ¶¶ 17-18, 25, 27, 29, 31, 33, 35, 37, 39, 41</p>

Pursuant to Local Rule 56-1(e), Defendants provide the following additional facts in support of this Opposition and Counter-Motion as detailed below.

ADDITIONAL FACTS

UNDISPUTED FACT	EVIDENCE
40. Hung Ky, NTKN's founder, began selling Hawaiian apparel from his home in 1992.	Declaration of Howard Ky ("Ky Decl.") ¶ 3.
41. Mr. Ky founded Ky's International Fashion, Inc. ("Ky's") in 1997 and later dissolved Ky's when Mr. Ky formed NTKN in 2016.	Ky Decl. ¶ 4.
42. Ky's fabric inventory and other assets were later transferred to NTKN.	Ky Decl. ¶ 5.
43. From 1997 to 2014, Ky's purchased large volumes of printed fabrics from Trendtex Fabrics and HawaiiPrint for use by Ky's, and later NTKN, to manufacture clothing.	Ky Decl. ¶ 6,
44. Over this 17-year period, Ky's purchased hundreds of thousands of yards of printed fabric.	Ky Decl. ¶ 7.
45. NTKN used the purchased fabric to make made-to-order or small-batch garments which it sold.	Ky Decl. ¶ 8.
46. When COVID temporarily shut down NTKN's warehouse, NTKN began selling products online.	Ky Decl. ¶ 9, 10.
47. NTKN has only used a portion of the original fabric that it purchased directly from Trendtex and HawaiiPrint many years earlier.	Ky Decl. ¶ 11.
48. The remaining fabric is in NTKN's warehouse, and NTKN slowly manufactures this fabric into shirts on a made-to-order basis.	Ky Decl. ¶ 11; Bacani Decl. ¶ 3, Ex. 2 (excerpt Ky Depo. at 53:8-16).
49. Trendtex sold fabric incorporating the EH-20129 surface design to NTKN's	Ky Decl. ¶¶ 14, 21.

predecessor, Ky's International Fashion, Inc. ("Ky's).	
50. Trendtex sold fabric incorporating the EH-2E13B surface design to Ky's.	Ky Decl. ¶¶ 14, 22.
51. Trendtex sold fabric incorporating the EH-2M59 or EH-2M59R surface design to Ky's.	Ky Decl. ¶¶ 14, 23.
52. HawaiiPrint sold fabric incorporating the 73142 surface design to Ky's..	Ky Decl. ¶¶ 15, 24.
53. HawaiiPrint sold fabric incorporating the 73469 surface design to Ky's.	Ky Decl. ¶¶ 15, 26.
54. HawaiiPrint sold fabric incorporating the 73571 surface design to Ky's.	Ky Decl. ¶¶ 15, 28.
55. HawaiiPrint sold fabric incorporating the 73614 surface design to Ky's.	Ky Decl. ¶¶ 15, 30.
56. HawaiiPrint sold fabric incorporating the 73627 surface design to Ky's.	Ky Decl. ¶¶ 15, 32,
57. HawaiiPrint sold fabric incorporating the 4319B surface design to Ky's.	Ky Decl. ¶¶ 15, 34.
58. HawaiiPrint sold fabric incorporating the 73269 surface design to Ky's.	Ky Decl. ¶¶ 15, 36.
59. HawaiiPrint sold fabric incorporating the 03780 surface design to Ky's.	Ky Decl. ¶¶ 15, 38.
60. HawaiiPrint sold fabric incorporating the 73138 surface design to Ky's.	Ky Decl. ¶¶ 15, 40.
61. Trendtex's records do not show all transactions between Ky's and Trendtex and HawaiiPrint.	Ky Decl. ¶¶ 13-15.
62. Trendtex's records fail to account for or reconcile the instances when Trendtex or HawaiiPrint would fulfill an order to Ky's but would ship the fabric in a color that differed from the samples originally provided by Trendtex or HawaiiPrint to Ky's.	Ky Decl. ¶¶ 17, 18, 21-41.
63. NTKN would often receive the non-conforming fabric and use it to manufacture clothing, even though it	Ky Decl. ¶ 20.

differed from the colorways originally proposed by Trendtex.	
64. This would result in clothing bearing a Trendtex design in a color that Trendtex may not have widely distributed.	Ky Decl. ¶¶ 20.
65. NTKN would sometimes notify Trendtex or HawaiiPrint of the discrepancy in fabric but more often would just use it rather than return it to the factory since returning it could result in significant delays.	Ky Decl. ¶¶ 19.
66. Plaintiffs never informed NTKN's counsel that Trendtex Fabrics had assigned away to Trendtex Holding the rights to sue for past, present and future infringement.	Bacani Decl. ¶8.
67. Although Trendtex Fabrics no longer owned the rights to sue or maintain suit for infringement of the Asserted Copyrights, it continued to assert infringement claims against NTKN and the other defendants, including Tropiholic, Inc., Shaka Time, Inc., Leilani's Attic, Inc., Hawaii Hangover, LLC and Mark Madl, d/b/a Cities Fashion	Dkt. 99; Bacani Decl. ¶ 2, Ex. 1 (Settlement Agreements filed under seal).
68. Trendtex has refused to produce any assignment or license between Trendtex Fabrics and Trendtex Holding, despite numerous discovery requests calling for the information.	Bacani Decl. ¶ 5, Ex. 4 (excerpts from NTKN's First Set of RFPs Nos. 131-150)
69. Some of the invoices and purchase orders are over 25 years old and were kept only as a hard copy over the years.	Hung Ky Decl. ¶¶ 6.
70. Trendtex's records do not include the samples provided from Trendtex or HawaiiPrint to NTKN, which samples often included colors and fabrics that were not eventually mass produced.	Hung Ky Decl. ¶¶ 21-41.
71. Plaintiffs have not established that the range of "Trendtex"-labeled colorways	Hung Ky Decl. ¶¶ 21-41.

from 2024 are representative of or consistent with the HawaiiPrint colorways from which Defendants acquired the fabric at issue many years ago.	
72. Dwight Hamai testified during his deposition that Trendtex constantly refreshed the fabric samples in its archive.	Bacani Decl. ¶ 3, Ex. 4 (excerpts from Dwight Hama Depo. at 103:20-108:5).
73. NTKN often labelled its colors differently from how Trendtex or HawaiiPrint labelled <u>the same colors</u> .	Bacani Decl. ¶ 6, Ex. 5 (excerpts from expert report of Linda Bradley).
74. For the KS-6919 Design, Trendtex designated its colorways as sage, blue, and natural. (Bacani Decl. ¶ 7, Ex. 6 at NTKN 146).
75. NTKN manufactured that fabric into its AL-805 design, but referred to the same, blue, and natural colorways as green, navy blue, and cream.	Bacani Decl. ¶ 7, Ex. 6 at NTKN 559.
76. HawaiiPrint included colorway identifications such as slate, sage, royal, wine, aqua, and periwinkle in its invoices but NTKN did not use these names to describe the colors of its garments produced from these fabrics..	Bacani Decl. ¶ 7, Ex. 6 at NTKN 321-324.

DATED: Honolulu, Hawai'i, March 22, 2024.

Respectfully submitted,

/s/ Rex Y. Fujichaku

Rex Y. Fujichaku

David M. Plona

Lena N. Bacani (*pro hac vice*)

Attorneys for Defendants and

Counterclaimants NTKN, Inc. and Hung Ky